

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:
Plaintiff	:
vs.	:
	: CRIMINAL NO. 1:CR-03-294
	:
DARIN L. HEDGEPEETH,	:
Defendant	:

M E M O R A N D U M

On August 13, 2008, Defendant, Darin Hedgepeth, filed a pro se motion he titled a "Motion to Relate Back Pursuant to Fed. R. Civ. P. Rule 15(c)(1)(B)," in which he seeks to supplement or amend a 28 U.S.C. § 2255 motion he had filed on October 5, 2006. We denied that motion in orders dated December 28, 2006, and June 14, 2007, the latter coming after a hearing. On November 5, 2007, the Third Circuit denied a certificate of appealability.

Defendant cannot invoke Rule 15 in these circumstances. That rule is not applicable after a final judgment has been entered. *Ahmed v. Dragovich*, 297 F.3d 201, 207-08 (3d Cir. 2002). Here, our June 14 order was a final judgment. Hence, Defendant cannot amend his 2255 motion by way of Rule 15. *United States v. Hill*, No. 95-CR-412, 2005 WL 1126952, at *2 (E.D. Pa. May 12, 2005)(Rule 15 does not apply after a 2255 motion has been denied at the trial level and on appeal)(citing *Ahmed*).

In any event, even if Rule 15 applied here, we still could not grant Defendant's motion. He wishes to litigate a new claim that we violated his right to self-representation when we did not give him the option of representing himself.¹ Contrary to Defendant's assertion, this claim does not arise from "a common core of operative facts" with his 2255 claims. *Mayle v. Felix*, 545 U.S. 644, 664, 125 S.Ct. 2562, 2574, 162 L.Ed.2d 582 (2005). It certainly does not arise from a common core of facts based on Defendant's specific assertion that, like his other claims, it arises from his trial proceedings. *Id.*, 125 S.Ct. at 2574.

Despite the label placed on Defendant's motion this is no more than an attempt to file a second or successive § 2255 motion, which requires approval by the Third Circuit Court of Appeals. See 28 U.S.C. §§ 2255(h) and 2244(b)(3).

We will issue an appropriate order.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

Date: September 3, 2008

¹ In his motion, Defendant made a claim that we failed to give him a new attorney despite his irreconcilable conflicts with his trial counsel or, alternatively, that we failed to obtain a waiver of the conflicts.

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O R D E R

AND NOW, this 3rd day of September, 2008, it is
Ordered that Defendant's motion (doc. 126) "to Relate Back
Pursuant to Fed. R. Civ. P. Rule 15(c)(1)(B)" is denied.

/s/William W. Caldwell
William W. Caldwell
United States District Judge